YING TAI PLASTIC & METAL MANUFACTURING (S) PTE. LTD.

v.

ZAHRIN RABU & ORS.

COURT OF APPEAL, SINGAPORE
WEE CHONG JIN CJ
TS SINNATHURAY J
FA CHUA J
[CIVIL APPEAL NO. 37 OF 1982]
18 NOVEMBER 1983

LABOUR LAW: *Workmen's compensation - Interpretation - Consolidating Act - Whether altering existing law - Whether application for compensation under Workmen's Compensation Act debars workmen from proceeding under common law for damages.*

The plaintiff/respondent claimed damages for personal injuries received by him during the course of his employment with the defendants/appellants. The respondent who is illiterate had received a letter from the Commissioner for Labour together with forms Ex.P2 & 3. He took the forms back to the Labour Office and returned them after having affixed his right thumb print to the form Ex.P3 in the erroneous belief that he was merely acknowledging receipt of the letter. Form Ex.P3 is the mechanism under which the application for a claim under the Workmen's Compensation Act is made. When the respondent instituted the common law action the appellants raised a preliminary point that the respondent was debarred from bringing this common law claim since he had already lodged a claim under the Workmen's Compensation Act. The respondent's solicitors had in the meantime written to the Commissioner for Labour and withdrawn the claim. The trial Judge held that the respondent was not precluded from bringing an action under the common law since he had no knowledge that he had made a claim under the Workmen's Compensation Act and the application had since been withdrawn. The appellants appealed from the decision.

Held:

[1] That the trial Judge was right in holding that the respondent had not applied to the Commissioner for compensation under the Act.

[2] The Act is a consolidating Act in the construction of which there is a strong presumption that it does not alter the existing common law.

[3] There is no obligation on the part of the worker to inform the Commissioner of the accident nor is he obliged to apply for compensation under the Act.

[4] The employer's liability to pay compensation under the Act is absolute, for the worker does not have to prove negligence on the part of the employer unlike under the common law.

[5] The Act does not declare that an application to the Commissioner for compensation *ipso facto* abrogates a workman's common law right for damages neither does the Act prohibit the withdrawal of the application for compensation.

[6] Section 33 (1) (a) only debars a worker from bringing a common law action for damages so long as there is a subsisting application before the Commissioner for compensation under the Act.

[7] The respondent may withdraw his application for compensation under the Act and proceed and maintain his action for damages in the Courts.

Cases referred to:
R. v. Governor of Brixton Prison ex p. De Demko [1959] 1 QB 268
National Assistance Board v. Wilkinson [1952] 2 QB 648

Legislation referred to:
Workmen's Compensation Act 1975 [Sing], ss. 30(1), 33(1)

For the appellants - Karuppan (Myint Soe with him)
For the respondent - S.B. Shah

JUDGMENT

Wee Chong Jin CJ, TS Sinnathuray J, FA Chua J:

The respondent (plaintiff) claimed damages for personal injuries received by him in the course of his employment with the appellants (defendants).

It was ordered that the issue (as raised in the defence) whether the respondent was precluded from bringing any action for damages in the High Court, be tried as a preliminary question of law.

The preliminary issue was heard by Rajah J and the learned Judge held that the respondent was not precluded from maintaining the action.

The appellants appealed. The appeal was dismissed with costs but we reserved judgment on the interpretation of s. 30(1) of the Workmen's Compensation Act 1975 (the Act).

The facts were these. The appellants who carry on the business of manufacturing plastic products for the electronic industry, employed the respondent as a machine operator. The respondent is illiterate both in Malay and English. On the 23 May 1981, the respondent, in the course of and arising out of his employment, met with an accident as a result of which he lost four fingers of his right hand. He reported the accident to his office, and was admitted to the Singapore General Hospital where he was treated for his injuries.

Some time after he left the hospital and while at home he received a letter from the Commissioner of Labour which had enclosed in it a document similar to Ex.P2 and the document Ex.P3, which was then unfilled except for the figures 7353/81 inserted against "NWCR" and 25 May 1981 inserted against "Accident On".

He went to the Commissioner's office some four of five days after receipt of the letter, but before he did so he returned to work with the appellants. He did not speak to any one at his employers' office about the letter. He said that when he went to the Commissioner's office on the 7 June 1981, he did not know what the contents of the Ex.P2 and Ex.P3 were. He also said that at the office of the Commissioner no one interpreted or explained Ex.P2 or Ex.P3 to him and that he affixed his right thumb print to Ex.P3 in the belief that he was acknowledging the receipt of the Commissioner's letter to him.

Ex.P3 as it now stands reads:

NWCR 7353/81
Commissioner for Labour
Accident on 25/5/81 8 July 1981

I, Zahrin bin Rabu (I/C No.: 1717481 I date of Birth : 24 October 64) residing at 3 Lorong Lihat, Singapore 2470 wish to claim compensation for injuries sustained in the abovementioned accident under Workmen's Compensation Act.

2. I wish to claim against the employer/employer's insurer.

7 July 1981

(RTP of Zahrin bin Rabu)

On 12 January 1982, the respondent's solicitors wrote to the Commissioner to put on record that the respondent had not applied for workmen's compensation in that he had signed the letter of 7 July 1981, under the misrepresentation that it was an acknowledgement slip and asked the Commissioner to treat the said letter as cancelled. (Ex.D1).

On 29 January 1982, the Commissioner replied:

Since your client, Zahrin bin Rabu wishes to claim damages under Common Law in respect of the above accident, please note that this office will take no further action on this matter." (Ex.D2).

Section 33 of the Act provides:

33. - (1) Nothing contained in this Act shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted an action for damages in respect of that injury in any court against his employer or if he has recovered damages in respect of that injury in any court from his employer, and no action for damages shall be maintainable in any court by a workman against his employer in respect of any injury -

(a) if he has applied to the Commissioner for compensation under the provisions of this Act; or

(b) if he has recovered damages in respect of the injury in any court from any other person.

(2) If an action is brought within the time specified in s. 11 in any court to recover damages independently of this Act for injury caused by any accident and it is determined in the action or an appeal that the injury is one for which the employer is not liable but that he would have been liable to pay compensation under the provisions of this Act, the action shall be dismissed; but the court shall, if the workman so chooses, proceed to assess such compensation and may deduct therefrom all or any part of the costs which, in its judgment, have been caused by the workman instituting the action instead of proceeding under this Act.

Two issues were raised before the learned Judge:

(1) whether the respondent by having appended his thumb print to Ex.P3 "has applied to the Commissioner for compensation under the provisions of this Act";

(2) if the answer to (1) is in the affirmative whether the respondent was precluded from bringing any action for damages in the High Court.

The learned Judge was satisfied that the respondent was completely illiterate and that, unless someone had interpreted and explained the contents of Ex.P2 and Ex.P3 to him in Malay, he would not have known what the contents of Ex.P2 were. The learned Judge was also satisfied that when the respondent arrived at the office of the Commissioner he was not aware of the contents of Ex.P2 and Ex.P3 and that the officer who attended to him had not seen to it that the documents were interpreted to the respondent through a proper interpreter. The learned Judge found the respondent to be a truthful witness and he accepted the respondent's evidence in regard to Ex.P2 and P3 and found that the respondent appended his right thumb print to Ex.P3 in the belief that what he was doing was to acknowledge the receipt of a letter

from the Commissioner. The learned Judge therefore was of the view that the respondent had not applied to the Commissioner for compensation under the provisions of the Act.

On the second issue, the learned Judge was of the view that "a workman's unilateral voluntary application for compensation under the Act can in the same way voluntarily and unilaterally be withdrawn by the workman thus enabling him to proceed and so maintain his action for damages in any Court."

We were of the view that on the evidence the learned Judge was right in coming to the conclusion that in fact the respondent had not applied to the Commissioner for compensation under the provisions of the Act. We therefore dismissed the appeal, but reserved judgment on the interpretation of s. 33(1) of the Act.

Counsel for the appellants submits that the mere application to the Commissioner by a workman for compensation under the provisions of the Act operates to abrogate an injured workman's cause of action at common law for damages with the resultant loss of his common law right of action for damages against the employer. Counsel further submits that once an application for compensation is made to the Commissioner it cannot be withdrawn.

The Act is "An Act to consolidate and amend the law relating to the payment of compensation to workmen for injury suffered in the course of their employment."

In the construction of a consolidation Act, there is a particularly strong presumption that it does not alter the existing law. In *R. v. Governor of Brixton Prison, ex. P. De Demko* [1959] 1 QB 268 Lord Evershed M.R., dealing with s. 31(1)(a) of the Supreme Court of Judicature (Consolidation) Act 1925 said (at pp. 280, 281):

> One has to begin by the consideration that the Judicature Act 1925, is expressed to be a consolidating Act; and one does not look for substantial changes in the law, or the jurisdiction, in a consolidating Act.

Counsel for the appellants seeks to put an interpretation to s. 33(1)(a) which, if his arguments were to prevail, would in effect make an alteration to the common law. There is a presumption against changes in the common law. It is presumed that the legislature does not intend to make a substantial alteration in the law beyond which it expressly declares, (per Lord Goddard CJ in *National Assistance Board v. Wilkinson* [1952] 2 QB 648). Lord Devlin in the same case said:

> It is a well-established principle of construction that a statue is not to be taken as effecting a fundamental alteration in the general law unless it uses words that point unmistakably to that conclusion.

Under the Act the worker, unlike the employer, is not obliged to inform the Commissioner of the accident, nor is he obliged to apply to the Commissioner for compensation in respect of it. The act of applying for compensation is purely a voluntary one on the part of the workman.

The employer's liability to pay compensation under the Act is absolute. The worker (unlike under the common law) does not have to show negligence on the part of the employer. The Act in fact gives the worker rights against his employer which he did not have under the common law.

Section 33 provides for a limitation of the workman's right of action but it does not specifically say that the workman's common law right of action for damages is automatically extinguished if he applies to the Commissioner for compensation under the Act. What it does say is that a workman shall not maintain an action for damages if an application for compensation has been made by him to the Commissioner.

It seems to us that it was never the intention of the legislature to deprive a workman of his common law rights against his employer. The scheme of the Act is not to abrogate a workman's common law cause of action but to enable him, if he wishes, to get a speedy remedy for the injury suffered by him. The Act sees to it that he does not get a double benefit - both compensation under the Act and damages under the common law for the one injury (s. 18).

A workman's cause of action in tort against his employer immediately vests in him under the common law and he has the right to bring proceedings in the Court and this right continues in him until such time as he may be debarred from doing so by the law of limitation.

Under s. 33 (1) (a) the worker is debarred from bringing a common law action for damages so long as there is an application by the workman before the Commissioner for compensation. But this debarment in no way affects the cause of action already vested in him. The Act does not prohibit the withdrawal of the application for compensation. As soon as the application for compensation is withdrawn, the right to maintain an action revives and the workman can then proceed with his action for damages in the Court. The workman's right to compensation under the Act lies dormant while he pursues his common law action but should he lose the action he may choose to ask the Court, under s. 33 (2), to assess compensation under the Act.

The Act does not expressly declare that an application to the Commissioner for compensation under the Act *ipso facto* abrogates a workman's common law right for damages.

We are in agreement with the learned Judge that the workman can withdraw his application for compensation under the Act and proceed and maintain his action for damages in the Courts.

Also found at [1984] 1 CLJ 203

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